named in section 14(1) of the Act, the court may, *inter alia,* forfeit or otherwise dispose them in such manner as it may direct'. What could be plainer than that? In such a case the court must give effect to the clear and explicit language of the enacting words of the subsection. It cannot disregard them unless it is apparent that some other meaning is intended. Of course, 'it must often be difficult to say that any terms [of a statute] are clear and unambiguous until they have been studied in their context'. (See *Attorney-General* v. *H.R.H. Prince Ernest of Hanover*[2]).

In the face of the abundantly clear words of section 14(2)(b) we find it hard to imagine any context, or any circumstances, which should persuade us to perform the surgical operation already mentioned. We cannot find anything in the said Act which leads us to the conclusion that the enacting words of section 14(2)(b) are not intended to have their ordinary and natural meaning. Nothing but the most compelling context would justify a construction radically altering the plain meaning of the enacting words in the section.

Forfeiture clauses are common in penal statutes. They can of course take many forms. We reiterate that there are cogent reasons of policy why the Price Control Act was passed. It provides for a forfeiture provision as an added penalty because we think that Parliament must have intended that a limited penalty without the forfeiture clause may prove illusory to remedy the mischief.

Lastly, we need to say something on the provision of section 407 of the Criminal Procedure Code. The learned judge seems to think it applies in the present case because there is no express provision in the said Act regarding forfeiture. Section 407 enacts that the court's power to order forfeiture is "subject to any special provisions relating to forfeiture contained in the written law under which the conviction was had." That in our opinion is a general provision. The Price Control Ordinance, 1946, the precursor to the Price Control Act was passed subsequently and brought into effect on October 1, 1946. It is a special enactment, and in passing it the legislature had its intention directed to the special case which the statute was meant to meet, and considered and provided for all the circumstances of the special case. Where a special provision is made in a special statute that special provision excludes the operation of a general provision in the general law — *generalibus specialia derogant.* Therefore the Price Control Act deals with a special case and to that extent the general provisions of the Criminal Procedure Code do not affect its operation.

We therefore answer the question referred in the affirmative.

Order accordingly.

Solicitors: *A. Gomez & Co.*

TIO CHEE HING v. CHUNG KHIAW BANK LTD.

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman F.J. & Seah J.) May 15 & October 15, 1981]

[Kota Kinabalu — Federal Court Civil Appeal No. 167 of 1979]

Practice and Procedure — Application for leave to appeal to Yang di-Pertuan Agong — Leave to levy execution as judgments entered more than six years ago — Interlocutory order — Whether order fit one for appeal — R.S.C., 1957, O. 42 r. 23 — Courts of Judicature Act, 1964, s. 74(1)(b).

The respondents had obtained leave to issue execution against the applicants on two judgments obtained more than six years ago. The Federal Court dismissed the appeal against the decision of the High Court, holding that the learned trial judge had exercised his discretion properly ([1981] 1 M.L.J. 227). The applicant applied for leave to appeal to the Yang di-Pertuan Agong.

Held: the order by the learned trial judge was not a final order but should be regarded for all intents and purposes as an interlocutory order. In order to obtain leave to appeal, the applicant must show that the order was a fit one for appeal and as he has failed to do so, the application must be dismissed.

Cases referred to:-

(1) *Lopez* v. *Valliappa Chettiar* [1968] 1 M.L.J. 224.

(2) *Bozson* v. *Altrincham Urban District Council* [1903] 1 K.B. 547, 548.

(3) *W.T. Lamb & Sons* v. *Rider, Same and Same* [1948] 2 All E.R. 402.

FEDERAL COURT.

R.R. Sethu for the appellant.

Alex Khoo for the respondent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivering the judgment of the Court): On September 8, 1980 this court dismissed an appeal by the present applicants from the order of the High Court of Borneo sitting at Sandakan dated August 6, 1979, giving leave to the respondents/plaintiffs to execute the judgments they had obtained in Kota Kinabalu High Court Civil Suit Nos. 181 and 182 of 1969.

This is an application for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong against the whole of the decision, and for stay of execution of the orders and/or judgments in the aforementioned civil suits.

Judgment had been entered against the appellant in both Civil Suits (Civil Suit Nos. 181 and 182 of 1969) on April 6, 1970. In each case appellant had failed to enter appearance and judgment was entered in default of appearance. The former action was in respect of a charge to secure the repayment of a considerable sum of money advanced to a "Company" of which the appellant was the sole proprietor. The latter was for repayment of the overdraft granted to the appellant.

The respondents had then applied successfully to the High Court under Order 42 rule 23 of the Rules of the High Court, 1957 for leave to issue execution against the appellant on the two judgments entered more than 6 years ago.

An appeal by the present applicant against the order granting leave was dismissed by this court on

December 8, 1980 for reasons set out in the judgment, the gist of which is that appellant had not satisfied the court that the learned judge had exercised his discretion wrongly.

Mr. Sethu for the applicant submits that this is a final judgment the subject-matter being above $25,000. He argues that there can be more than one final order and that an execution order is not interlocutory but machinery to get a final judgment into effect, which if we understand him aright makes it a final order as well. He argues that since this is an application for leave to appeal made under section 74(1)(a) of the Courts of Judicature Act, then an appeal lies as of right and the Federal Court has no discretion to refuse leave of appeal, citing as his authority the Privy Council decision in *Lopez* v. *Valliappa Chettiar*.[1]

Mr. Alex Khoo for the respondent confesses to uncertainty as to whether the order is final or interlocutory this being an appeal against the order of a judge giving leave to execute. He suggests that we would apply the test which was applied in *Bozson* v. *Altrincham U.D.C.*[2] at page 548 where Lord Alverstone C.J. said that the test to be applied is:

"....Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order."

The Bozson test has of course been the test which has been accepted by our courts. He submits that the better view would be that this order is interlocutory though even then he seems to think it comes within neither category.

We were referred to the Court of Appeal decision in *W.T. Lamb & Sons* v. *Rider, Same and Same*[3] wherein Scott L.J. (at page 407) said,

"....the right to sue on a judgment has always been regarded as a matter quite distinct from the right to issue execution under it and that the two conceptions have been the subject of different treatment. Execution is essentially a matter of procedure — machinery which the court can, subject to the rules from time to time in force, operate for the purpose of enforcing its judgments or orders."

We are of the view that the order by the learned trial judge granting leave to issue execution under Order 42 rule 23 of the Rules of the High Court, 1957 is not a final order and should be regarded for all intents and purposes as an interlocutory one. (For examples of interlocutory orders, a useful list may be found on pages 745 and 746 of the Supreme Court Practice, 1967 Vol. 1). It would therefore fall under section 74(1)(b) of the Courts of Judicature Act so that in order to obtain leave, the applicant will have to satisfy us that this is an order which is a fit one for appeal. Appellant has failed to do so.

This application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Khoo & Sidhu; Peter Loh & Co.*

TIO CHEE HING & ORS. v. GOVERNMENT OF SABAH

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman F.J. & George Seah J.) May 15 & October 15, 1981]

[Kota Kinabalu — Federal Court Civil Appeal No. 252 of 1979]

Practice and Procedure — Application for leave to appeal to the Yang di-Pertuan Agong — Finding that action is time barred — Final judgment — Courts of Judicature Act, 1964, s. 74(1)(a).

The applicants applied for conditional leave to appeal to the Yang di-Pertuan Agong against the decision of the Federal Court ([1981] 1 M.L.J. 207). The applicants had filed a claim for damages against the Government of Sabah alleging breach of an agreement by the Government of the Colony of North Borneo to lease 2430 acres of land to them. The respondent had applied for the action to be dismissed *inter alia* on the ground that it was statute-barred. The learned trial judge held the claim was statute-barred and he dismissed the claim for damages. The appeal to the Federal Court was dismissed. The applicants thereupon applied for leave to appeal to the Yang di-Pertuan Agong.

Held: as the judgment of the High Court in this case was a final one the application for conditional leave must be allowed on the usual terms.

Cases referred to:-

(1) *Ratnam* v. *Cumarasamy & Anor.* [1962] M.L.J. 330.
(2) *Bozson* v. *Altrincham Urban District Council* [1903] 1 K.B. 547.
(3) *Salaman* v. *Warner* [1891] 1 Q.B. 734.
(4) *Tampion* v. *Anderson* [1974] 48 A.L.J.R. 11, 12.
(5) *Salter Rex & Co.* v. *Ghosh* [1971] 2 Q.B. 597, 601.
(6) *Central Securities (Holdings) Bhd.* v. *Haron bin Mohamed Zaid* [1980] 1 M.L.J. 304.

FEDERAL COURT:

R.R. Sethu for the applicant.

Stephen Foo Kiat Shin (State Legal Adviser) for the respondent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivering the judgment of the Court): The applicants, who were the plaintiffs in the court below are applying for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong against the whole of the decision of this court given on October 21, 1980 dismissing the applicants' appeal against the order of the High Court.

The applicants had applied for an area of approximately 3280 acres of state land for agricultural purposes in 1960 from the then Government of the Colony of North Borneo. They alleged that an area of about 3300 acres was earmarked for their application which was registered as Lahad Datu Land Application No. 238/60. They were allowed initially to enter into an area of 851 acres, for which title was subsequently issued to them, with certain conditions for development. According to applicants, Government had promised to allow them to enter and occupy another 1312 acres of state land, as a second stage, if they fulfilled the conditions imposed on them under the first stage. They carried out the development of the 851 acres of land in accordance with the conditions imposed and made preparations at great cost to enter the second stage but, in spite of various requests made between 1964 and 1969, the respondent failed to give them the necessary approval. Finally, on March 26, 1971, they were informed that "their application for addi-